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EXAMINER				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/713,306
Filing Date: November 14, 2003
Appellant(s): AGRAWAL ET AL.

Michael J. Musella (Reg. No. 39,310)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 07, 2008 appealing from the Office action mailed December 20, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0065986

Fraenkel et al.

4-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 and 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraenkel et al., (US Publication No. 2003/0065986), (hereinafter Fraenkel).

Regarding claims 1, 4 and 12-13, Fraenkel discloses

generating and placing a session identifier (ID), (Table 1, Event Meter, record ID, transaction ID) as a correlation tag in each of a plurality of requests sent by a client to a web server device, (paragraph 119, lines 1-6), wherein said correlation tags identify said requests, (paragraph 119, lines 10-14);

generating and placing a connection identifier (ID) as a correlation tag, (paragraph 120, lines 1-5) in each communication packet sent between the client and the web server device, (paragraph 133, lines 1-7 and 15-18);

combining said plurality of requests and said communication packets into a metric, wherein said each request and communication packet corresponding to a single event is identified, (paragraph 120, lines 1-5 and paragraph 133, 5-18, paragraph 119, lines 11-18); and

estimating client perceived response time of at least one web server computing device to a request by one or more client computing devices connected to the web server device via a network, (Abstract, paragraph 14, lines 5-6).

Regarding claim 2, Fraenkel discloses

said event is selected from one of a web page download and a web session, (paragraph 50, lines 2-3).

Regarding claim 3, Fraenkel discloses

said calculating step is performed using analytical models of response time, (paragraph 20, lines 2-3).

Regarding claim 5, Fraenkel discloses
the network is the Internet, (paragraph 13, lines 20-23 and paragraph 72, lines 9-11).

Regarding claim 6, Fraenkel discloses
said step of generating and placing the session ID further comprises a step of establishing a web session between the client and the web server device, (paragraph 72, lines 9-11).

Regarding claim 7, Fraenkel discloses
a step of logging each web session between the client and the web server device, (paragraph 14, lines 15-18).

Regarding claim 8, Fraenkel discloses
said step of generating and placing a connection ID further comprises a step of establishing a network connection between the client and the web server device, (paragraph 72, lines 9-11).

Regarding claim 9, Fraenkel discloses
a step of logging said each communication packet sent between the client and the web server, (paragraph 14, lines 10-14).

Regarding claim 10, Fraenkel discloses
a step of grouping all of said plurality of requests and said communication
packets corresponding to a single event, (paragraph 15, lines 2-4).

(10) Response to Argument

Applicant argues:

Claims 1, 4 and 12-13

A - "Fraenkel discloses a root cause analysis of server system performance degradations. The system disclosed by Fraenkel is a mechanism for measuring the transaction response time at a set of remote monitoring agents; the remote monitoring agents are not actual clients. Fraenkel determines root cause analysis from latency measurements collected by remote monitoring agents and server side utilization measurements. Fraenkel does not teach or disclose page view response time, embedded objects, or simultaneous TCP connections; Fraenkel only discloses transaction response time.".

The Examiner disagrees.

A - In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., 'page view response time, embedded objects, or simultaneous TCP connections') are not recited in the rejected claim(s). Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

B - "Fraenkel does not teach or disclose tagging, at either the system/network level or application level."

The Examiner disagrees.

B - Fraenkel discloses the results for each transaction are stored in a database containing the following data: record ID (increases sequentially with each new execution event), transaction ID, result (status value) date/time, response time in seconds, and properties of agent computer (location, organization, etc) [Fraenkel, page 10, paragraph 19 and Table 1, Event Meter], Fraenkel also discloses application data transactions in the monitoring of the transactional servers [web servers, Fraenkel, paragraphs 8 and 12], monitoring and reporting on network time [network layer, paragraph 19] and server time [application time, paragraph 19], a server agent, monitoring of server resource utilization parameters concurrently with the monitoring of transaction response times, or other response times by the client side [paragraph 20], types of application data monitored from the server include capture screens returned by the transactional server [paragraphs 130-131], checking and storing of the capture screens [paragraph 132] and network transactions [paragraph 133].

C – “Claims 1, 4 and 12-13 recite a method/system of computing response time of a web server. The measurements of the invention of Claim 1 are based only upon server side measurements; that is the data is tagged, and the web server collects the tagged data. Fraenkel used measurements performed at an agent side. Server side measurements are not and cannot be equated with agent side measurements.”.

The Examiner disagrees.

C - In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., server side measurements) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, Fraenkel discloses server side measurements of the web server using a server agent [paragraph 20].

D – “In addition, Claims 1, 4 and 12-13 of the present application measures response time for actual clients; Fraenkel measures response time for monitoring agents.”.

The Examiner disagrees.

D - Fraenkel discloses agents on client machines simulating the actions of actual users (including the computers of actual end users) of the transactional server while monitoring and reporting the server's performance [paragraph 12].

E – “Still further, Fraenkel does not teach or disclose the insertion by a client of correlation tags into data of both networking and application layers. The networking layer of Claims 1, 4 and 12-13 relates to, for example, performance data for each TCP connection; a correlation tag is placed in the networking layer data. The application layer of Claims 1, 4 and 12-13 relates to, for example, a web log of a web server contains one entry for each HTTP request made by a client; a correlation tag is placed in the application layer data.”.

The Examiner disagrees.

E - Fraenkel discloses the results for each transaction are stored in a database containing the following data: record ID (increases sequentially with each new execution event), transaction ID, result (status value) date/time, response time in seconds, and properties of agent computer (location, organization, etc) [Fraenkel, page 10, paragraph 19 and Table 1, Event Meter], Fraenkel also discloses application data transactions in the monitoring of the transactional servers [web servers, Fraenkel, paragraphs 8 and 12], monitoring and reporting on network time [network layer, paragraph 19] and server time [application time, paragraph 19], a server agent, monitoring of server resource utilization parameters concurrently with the monitoring of transaction response times, or

other response times by the client side [paragraph 20], types of application data monitored from the server include capture screens returned by the transactional server [paragraphs 130-131], checking and storing of the capture screens [paragraph 132] and network transactions [paragraph 133].

F – “Still further, Claims 1, 4 and 12-13 of the present application measure the response time of a web server; Fraenkel measures transaction response time, i.e. the time taken for the application to complete a defined transaction or business process.”.

The Examiner disagrees.

F – Fraenkel measures the response time of a web server [paragraphs 12 and 14, the performance data may include for example, the server response time].

In response to applicant's arguments, the recitation 'measure the response time of a web server' has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

G – “The present application provides a model for a page view download that is performed at the server side; Fraenkel does not teach or disclose any page view download model performed at the server side.”.

The Examiner disagrees.

G - In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., page view download model performed at the server side) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 2-3 and 5-10

H – “Dependent claims 2-3 and 5-10 are allowable by virtue of at least their dependence on Claims 1 and 4.”.

The Examiner disagrees.

H – The arguments have been addressed in the rejection of claims 1 and 4 above.

Art Unit: 2141

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/W.J.G./

Examiner, Art Unit 2145

Conferees:

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145

/Rupal D. Dharia/

Supervisory Patent Examiner, Art Unit 2141